



LIBRARY OF CONGRESS

U.S. Copyright Office

37 CFR Part 201

Docket No. 2012–5

Verification of Statements of Account Submitted by Cable Operators and Satellite Carriers

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Interim rule.

SUMMARY: The U.S. Copyright Office is adopting an interim regulation that implements certain aspects of the Satellite Television Extension and Localism Act of 2010 (“STELA”). Cable operators and satellite carriers must file statements of account (“SOAs”) and deposit royalty fees with the Office in order to use the statutory licenses that allow for the retransmission of over-the-air broadcast signals. The Office published two notices of proposed rulemaking concerning a new process to allow copyright owners to audit the SOAs and associated royalty payments. The Office received extensive comments on its proposed audit procedures and is carefully reviewing these comments to address them as appropriate in a final rule. In the meantime, the Office is issuing an interim rule to establish the procedure for filing a notice of intent to audit one or more SOAs.

EFFECTIVE DATE: [INSERT DATE OF PUBLICATION IN THE *Federal Register*].

FOR FURTHER INFORMATION CONTACT:

Jacqueline C. Charlesworth, General Counsel, or Erik Bertin, Attorney Advisor, U.S. Copyright Office, P.O. Box 70400, Washington, DC 20024-0400. *Telephone:* (202) 707–8380. *Telefax:* (202) 707–8366.

SUPPLEMENTARY INFORMATION:

STELA amended the Copyright Act by directing the Register of Copyrights to issue regulations to allow copyright owners to audit the SOAs and royalty fees that cable operators and satellite carriers file with the Office. *See* 17 U.S.C. 111(d)(6), 119(b)(2). On June 14, 2012, the Office published a notice of proposed rulemaking that set forth an initial proposal for this procedure. *See* 77 FR 35643. The Office received extensive comments from groups representing copyright owners, cable operators, and individual companies that use the statutory licenses. The parties offered conflicting points of view on nearly every aspect of the proposal, including the procedures for selecting an auditor, for protecting the confidentiality of the licensee's records, for correcting the errors and underpayments identified in the auditor's report, and for allocating the cost of the audit procedure between the copyright owners and the licensee.

The Office carefully studied these comments and revised its proposal based on the suggestions that it received. The revised proposal was published for comment on May 9, 2013. *See* 78 FR 27137. The Office received comments from a wide range of stakeholders, and once again, the parties raised a number of complex issues, such as the records retention requirement and the procedure for expanding or suspending the scope of the audit.

The Office is carefully reviewing these comments and intends to issue a final rule that strikes an appropriate balance between the interests of the copyright owners and the cable and satellite licensees in the audit process. In the meantime, the Office is issuing an interim rule that addresses a procedural issue – the provision of notice of an intent to audit – that was not contested by the parties.

The Office's initial proposal explained that a copyright owner may initiate an audit by filing a notice with the Office. It explained that the notice should identify the SOAs to be included in the audit and the licensee that filed those SOAs. In addition, the notice should provide contact information for the copyright owner, along with a brief statement establishing that the copyright owner owns at least one work that was included in a secondary transmission made by that licensee during the accounting period or periods subject to audit. The proposed regulation further provided that a notice of intent to audit a particular SOA should be submitted within three years after the last day of the year in which that SOA was filed. It also explained that the copyright owner should provide a copy of the notice to the licensee on the same date that the notice is filed with the Office. It stated that the Office would publish this notice in the *Federal Register*. Within 30 days thereafter, any other copyright owner that wished to participate in the audit would be required to notify both the copyright owner that filed the notice and the licensee to be subject to the audit. Copyright owners that failed to comply with this requirement would not be permitted to participate in the audit process and would not be permitted to audit the same SOAs in a subsequent proceeding.

All of the parties agreed with this proposal. A group representing the copyright owners offered a minor suggestion for clarifying one aspect of this procedure, namely, that a group representing multiple copyright owners should be able to file an audit notice on behalf of its members. None of the other parties objected to this, and, as discussed in the prior *Federal Register* notice, the Office included this suggestion in its revised proposal. *See* 78 FR at 27139.

The Office finds there is good cause for adopting this procedural rule concerning notification of an intent to audit as an interim rule and for making the rule effective immediately. The other issues presented in this proceeding are numerous and complex. The Office issued an initial notice of proposed rulemaking that was based in part on a proposal that the Office received from a group of copyright owners. *See* 77 FR at 35644. In response to its initial proposal, the Office received detailed comments from more than a dozen stakeholders. It also received a counterproposal for revising nearly every aspect of the proposed regulation. The Office addressed many of these issues in a second notice of proposed rulemaking, which was published earlier this year. *See* 78 FR 27137. In response to this latest notice, the Office received another round of comments from nearly all of the parties in this proceeding. All of these parties raised issues of first impression that were not addressed in the initial phase of this proceeding. The Office is studying these new issues and intends to issue a final rule early next year. In the meantime, the interim rule will allow copyright owners to identify any SOAs from accounting periods beginning January 1, 2010 and later that they intend to audit. At the same time, it will provide licensees with advance notice of the SOAs that will be subject to audit when the final rule goes into effect.

List of Subjects in 37 CFR Part 201

Copyright, General Provisions.

Interim Regulation

In consideration of the foregoing, the U.S. Copyright Office amends part 201 of 37 CFR, as follows:

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

Section 201.10 also issued under 17 U.S.C. 304.

2. Add new § 201.16 to read as follows:

§ 201.16 Verification of a Statement of Account and royalty fee payments for secondary transmissions made by cable systems and satellite carriers.

(a) *General.* This section prescribes procedures pertaining to the verification of a Statement of Account and royalty fees filed with the Copyright Office pursuant to sections 111(d)(1) and 119(b)(1) of title 17 of the United States Code.

(b) *Definitions.* As used in this section:

(1) The term *cable system* has the meaning set forth in § 201.17(b)(2).

(2) *Copyright owner* means any person or entity that owns the copyright in a work embodied in a secondary transmission made by a statutory licensee that filed a Statement of Account with the Copyright Office for an accounting period beginning on or after January 1, 2010, or a designated agent or representative of such person or entity.

(3) The term *satellite carrier* has the meaning set forth in 17 U.S.C. 119(d)(6).

(4) The term *secondary transmission* has the meaning set forth in 17 U.S.C. 111(f)(2).

(5) *Statement of Account* or *Statement* means a semiannual Statement of Account filed with the Copyright Office under 17 U.S.C. 111(d)(1) or 119(b)(1) or an amended Statement of Account filed with the Office pursuant to § 201.11(h) or § 201.17(m) of this chapter.

(6) *Statutory licensee* or *licensee* means a cable system or satellite carrier that filed a Statement of Account with the Office under 17 U.S.C. 111(d)(1) or 119(b)(1).

(c) *Notice of intent to audit.* (1) Any copyright owner that intends to audit a Statement of Account for an accounting period beginning on or after January 1, 2010 must notify the Register of Copyrights no later than three years after the last day of the year in which the Statement was filed with the Office. The notice of intent to audit may be filed by an individual copyright owner or a designated agent that represents a group or multiple groups of copyright owners. The notice shall identify the statutory licensee that filed the Statement(s) with the Copyright Office, the Statement(s) and accounting period(s) that will be subject to the audit, and the party that filed the notice, including its name, address, telephone number, facsimile number, and email address. In addition, the notice shall include a statement that the party owns, or represents one or more copyright owners that own, a work that was embodied in a secondary transmission made by the statutory licensee during one or more of the accounting period(s) specified in the Statement(s) of Account that will be subject to the audit. A copy of the notice of intent to audit shall be provided to the statutory licensee on the same day that the notice is filed with the Copyright Office. Within 30 days after the notice has been received in the Office, the Office will publish a notice in the *Federal Register* announcing the receipt of the notice of intent to audit.

(2) Within 30 days after a notice of intent to audit a Statement of Account is published in the *Federal Register* pursuant to paragraph (c)(1) of this section, any other copyright owner that owns a work that was embodied in a secondary transmission made by that statutory licensee during an accounting period covered by the Statement(s) of Account referenced in the *Federal Register* notice and that wishes to participate in the audit of such Statement(s) must provide written notice of such participation to the

statutory licensee and to the party that filed the notice of intent to audit. A notice given pursuant to this paragraph may be provided by an individual copyright owner or a designated agent that represents a group or multiple groups of copyright owners, and shall include all of the information specified in paragraph (c)(1) of this section.

(3) Once a notice of intent to audit a Statement of Account has been received by the Office, a notice of intent to audit that same Statement will not be accepted for publication in the *Federal Register*.

Dated: December 13, 2013.

Maria A. Pallante,
Register of Copyrights.

James H. Billington,
The Librarian of Congress.

[BILLING CODE 1410-30-P]

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